IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13189 of 2004
with
Special Civil Application No.20969 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NIMESH GULABCHAND GALA & 1 - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

==========

Appearance :
MR Mihir Joshi with Mr NV ANJARIA for Petitioner(s) : 1 - 2.
Ms Darshana S Pandit, asstt.GOVERNMENT PLEADER for Respondent(s) : 2,
MS AMEE YAJNIK for Respondent(s) : 3,
Mr S I Nanavati with Mr V K Bhatt for NANAVATI & NANAVATI for Respondent(s) : 4,
==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS)

The petitioners who are residents of village Lakhapar, Taluka Mundra, Kachchh, by way of this public interest litigation have made grievance of the industrial activity of manufacturing Low Ash Metallurgical Coke (for short, 'LAM'), started by respondent no.4-Mahashakti Coke, a Unit of Saurashtra Fuel Private Ltd., Lakhapar, who have illegally constructed a plant on the agricultural land bearing survey no. 165, 166/1 and 167. According to the petitioners, the company produces 300 tonnes of coke every day from raw coke imported from foreign countries like Australia and China and the process involves generating of heat in the range of 1300 - 1400 cc in the Coke Ovens at least 100 times a day. It is the say of the petitioners that the manufacturing process adopted by respondent no.4 causes serious pollution in surrounding areas giving rise to the diseases like TB and other lung diseases among the residents in all age group. Spreading coke particles not only blacken the standing crop in the nearby fields but also causes damage.. It also adversely affects the grazing of cattle. The coke production activity has thus resulted in both air and water pollution and is against public health and interest. With the above averments, the petitioners have prayed for a dissection for closure of respondent no.4-factory holding that permitting the company to continue with production activity is against public interest. By amending the prayer clause, it is prayed to set aside the NOCs dated 25.9.2002 and 17.3.2004-Annexures 'E' and 'D' respectively to the petition, granted to respondent no.4-company by respondent no.3, Gujarat Pollution Control Board (for short, 'Board'), is illegal and violative of necessary provisions of law.

2. We have heard Sr.counsel Mr Mihir Joshi appearing with Mr N V Anjaria for the petitioners as well as Mr S I Nanavati, Sr.counsel appearing with Mr V K Bhatt for respondent no.4 company, Ms. Amee Yajnik, learned Advocate appearing for respondent no.3-Gujarat Pollution Control Board and Ms. Darshana S Pandit, learned AGP for the State at length.

3. Learned Advocate Mr Mihir Joshi submitted that the challenge is against the authority of respondent no.3 to grant NOC dated 25.9.2002 and 17.3.2004 (Annexures " and 'D') respectively to respondent no.4 for manufacturing LAM coke with production capacity of 17000 M.T per month, by contending that respondent no.3 has not considered the parameters to be observed regarding the gaseous emission and air quality while considering the permission applied for enhanced production capacity. The learned counsel also submitted that respondent no.3 has totally ignored the fact that by the subsequent NOC not only the production of LAM coke but also air and water pollution would increase substantially in Lakhapar village as well as the surrounding villages of the region. He has further submitted that as if it is not sufficient, respondent no.3 has further granted NOC to manufacture 12000 MT per month of pig iron and has also granted permission to set up 15 MW power plant. According to the submission of the learned counsel, such permission is nothing but a planned and open violation of relevant statutory provisions of the pollution control laws. He, by inviting our attention to the relevant provisions of the pollution control law, has submitted that various parameters

with regard to gaseous emission, air quality etc. are to be observed by respondent company but it has committed breach of provisions of law by emitting gaseous air and has polluted the quality of air. It was further submitted that respondent no.4-company has kept respondent no.3 totally in dark by not showing the process of respondent no.4-company in producing coal and what kind of technical equipments are installed. He has submitted that the nature of production, process, kind of machinery and the equipments used are vital in judging the extent and potential of pollution.

4. It may be stated at this stage that with a view to satisfy our conscience, during the course of hearing we have called for the file of respondent no.4 from respondent no.3. We have minutely examined the file in order to ascertain as to how respondent no.3 granted NOC in favour of respondent no.4. Not only that but we have also examined and taken into consideration the kind of emission developed/generated in the process, its ingredients and the effect thereof. We have also permitted the learned counsel for the petitioners access to the file produced by the respondent No.3. After hearing the learned Counsel for the petitioners and the respondents, the matter was adjourned for want of time. Today when the matter was called out Mr N V Anjaria, learned Advocate for the petitioners wanted to produce affidavit-in-rejoinder while addressing the court in reply to the submissions advanced on behalf of the respondents. We have refused to take the affidavit-in-rejoinder by inviting his attention to the fact that the learned counsel has already submitted and he has been heard at length and no useful purpose would be

served by filing such a rejoinder now and that too while replying the oral submissions of the learned counsel for the respondents. The record itself being too bulky and the parties having already filed affidavits, rejoinders, sur-rejoinders, with a view to avoid repetition as well as expansion of the scope of the petition by the parties, we refused production and taking affidavit-in-rejoinder on record.

5. In response to the notice issued by this court, the respondents have filed their affidavits. On behalf of respondent no.4, Dipen Naren Chanchani, constituted Power of Attorney of M/s.Saurashtra Fuels Pvt.Ltd. Porbandar has filed affidavit-in-reply wherein it is inter alia pointed out that after purchasing the land at village Lakhapar as well as village Baraya of Taluka Mundra, District Kachchh for manufacturing low-ash metallurgical coke (for short, 'LMC') from imported coal in the month of August 2002, the company approached Gujarat Pollution Control Board for necessary approval and consent. Annexure 'A' is the NOC issued by respondent no.3 on 25.9.2002 for manufacturing 17000 M.T. Of LMC per month. Annexure 'B' is the certificate for Non-agricultural use of the said land dated 20.12.2002 issued by the Collector, Bhuj under section 65B of the Bombay Land Revenue Code. Likewise, the Collector has also issued certificate for necessary permission on 1.4.2004 of the land in question. Annexure 'D' is the report regarding pollution level obtained by respondent no.4 from M/s.Comet Consultancy Services, Rajkot after which it commenced production. On perusal of the said report, it appears that representative of Comet Consultancy Services visited

the plant of respondent no.4 on 5.6.2004 and took samples and submitted report of Ambient Air Quality Monitoring dated 8.6.004. It is asserted by the deponent that the emission of effluents is well within the permissible limit. Respondent no.3 Gujarat Pollution Control Board (for short, 'the Board') by letter dated 17.4.2004 granted necessary NOC vide Annexure 'E' for increasing the production capacity. The Board also issued necessary consolidated consents and authorization by its letter dated 6.4.2004 vide annexure 'F'.

6. The deponent has further pointed out that respondent no.4 has , upto 21.2.2004 incurred necessary expenditure on land plant and machinery to the extent of Rs.1012 lakhs as per certificate issued by Chartered Accountant and the total expenditure incurred by the respondent by now comes to Rs.6800 lakhs and respondent no.4 provides employment to about 800 employees. It is asserted by the deponent that the establishment of the factory is situated at a near distance of about 2 kms from village Lakhapar. It is stated by him that this petition is not bonafide and has been filed without proper enquiry to gain cheap publicity and popularity. It has been pointed out that a similar litigation under Order 1 Rule 8 of the Code of Civil Procedure, 1908 was filed in the Court of Civil Judge (J.D.), Mundra, being Regular Civil Suit No.89 of 2002 wherein a prayer was made to restrain respondent no.4 from any construction on the land in question and/or not to install any machinery relating to Coke Oven Industry or any act, which may at large cause damage to the public health and cause nuisance and annoyance. The learned Civil Judge (JD) by

order dated 7.5.2003 rejected the said application for interim relief. Against the said order an appeal was preferred before District Judge, Bhuj and the Joint District Judge, Bhuj rejected the said appeal being Appeal No.93 of 2003 by order dated 9.4.2004. It was, therefore, submitted that the petitioners have not approached this court with clean hands and suppressed the fact of above referred suit filed in the Civil Court under Order 1 Rule 8 of the Code of Civil Procedure and that the petition is required to be rejected only on this ground. Respondent no.4 has also pointed out that the petition itself is filed malafide as more than 100 residents of village Lakhapar as well as village of Tarapura have represented to the collector that this industry is the bread and butter of the people of the surrounding areas. The said report is produced at Annexure'G'.

7. The point, in this petition, in our opinion, required to be decided is whether respondent no.3 Board has followed proper procedure and has taken into consideration the relevant material to meet with the requirement of it and whether any precautionary measure is suggested or any condition is imposed to prevent air pollution. In that regard, it is necessary to refer to the affidavit-in-reply only on behalf of the respondent.

8. Mr J K Vyas, Environmental Engineer, Gujarat Pollution Control Board has filed affidavit-in-reply. According to him, as per the NOC issued by the Board, the industrial unit is engaged in production of 17000 M.T. Of LAM coke per month and consumes 22000 MT of coal as raw material for its industrial operation. It also uses 1,70,000 litres of water per day but

discharges zero wastewater discharge and does not produce any hazardous waste. Regarding air pollution control measures, the unit has constructed an under ground tunnel as precautionary measure. He has further stated that on 7.10.2004, the Board had issued notice under section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Act') to the industrial unit asking why the Board should not prohibit the unit from manufacturing LAM coke. Thereafter, on 22.11.2004, directions were issued under section 31-A to the unit to prevent air pollution due to the emission of dust particles. According to the deponent, the said notice was issued pursuant to the receipt of complaints from people the surrounding areas and based on the report of vigilance cell of the Board. It appears that the respondent no.4 thereafter filed affidavit fulfilling the norms prescribed by the Board. The affidavit further shows that the officers of the Board immediately carried out an inspection and thereafter and it was observed that adequate air pollution control measures were in place. On the basis of this inspection report the order under section 31-A was issued vide Annexure 'E'. From the affidavit, it further appears that before that inspection was carried out on 16.12.2004 and submitted its report dated 18.12.2004 after taking into consideration the compliance of the various requirements under different Acts, it was observed that the industrial unit had provided two settling tanks which collected water used in quenching of coal. This water is re-used and hence it was found that there is no waste water discharge. Affidavit of respondent no.3 further states that with regard to AIR Act, it was observed that the industrial unit has

provided a wall of approximately 8 feet high surrounding the storage area where the product is stored. Water is continuously sprinkled on coal stocked in the area. It was also observed that all crushers and screeens are completely covered to suppress dust emission. Water is also continuously sprinkled on internal RCC roads, which are cleaned by mechanical sweepers. The industrial unit has also provided stack height of 30 meters and a long underground masonary tunnel connecting all four coke oven battery stacks to reduce emission of dust particles when the coal is conveyed to the crusher.

9. We have gone through the inspection report dated 16.12.2004 produced at Annexure 'F' wherein it is stated that the unit does not generate any hazardous waste. In para 7 of the affidavit, it is stated that the Regional Office, Jamnagar carried out stack emission sampling from stack attached to the coke oven battery no.3 and observed that emission from this stack was adheres to the norms stipulated by the Board. It is further stated that the office also carried out ambient air quality monitoring near the main gate of the industrial unit and it was observed that ambient air near the main gate also conformed to the norms stipulated by the Board. The analysis reports are produced at Annexure 'G' to the said affidavit. Finally, it is stated that from time to time the Board has granted NOC to the industrial unit and the Board has been conducting periodic inspections and monitoring of the unit regularly.

10. Having considered the affidavit of respondent no.4, we are satisfied that respondent no.3 board has carried out all its obligations under the Act before

granting NOC to respondent no.4 in commissioning of the plant. Whenever it was brought to the notice of respondent no.3 that respondent no.4 was causing air pollution, appropriate action was initiated by the Board which can be seen from the notice dated 7th October, 2004 calling upon respondent no.4 to show cause as to why the Board should not prohibit the unit from manufacturing LAM coke. Apart from that, the Board had given permission to re start the unit only after respondent no.4 filed undertaking to meet with the statutory requirements as per the norms of the Board. Not only that but the Board has also carried out inspection thereafter and has been satisfied that respondent no.4 has provided adequate facilities for containing. We have gone through the report dated 18.12.2004 on the inspections carried out by respondent no.4 wherein respondent no.4 is shown to have complied with the various requirements under different Acts. Respondent no.4 has provided two settling tanks where water is collected and stored after quenching of coal. This water is also reused and hence there is no waste water discharge. Likewise, respondent no.3 has also taken proper precautions to prevent air pollution by ensuring that respondent no.4 constructed a 8 ft. high wall to provide surrounding storage area where the product is stored. Water is continuously sprinkled on internal roads, which are made of RCC and are cleaned by mechanical sweepers. Not only that the respondent no.4 has also provided stack height of 30 meters and a long underground masonary tunnel connecting all four cock battery stacks to reduce emission of dust particles. The Unit has also provided water sprinklers over the coal conveyor belts to

avoid dust emission when the coal is conveyed to the crusher. Thus, having examined the report dated 16.12.2004 of the Board minutely, we are of the opinion that respondent no.3 had remained rigid and vigilant in monitoring the manufacturing the activities of respondent no.4. It is clear from the evidence on record that respondent no.3 Board conducted periodical inspections. We ourselves are satisfied with the inspection reports and it is not necessary for us to go deep into the matter and make further inquiries.

11. Learned Advocate Mr Anjaria , by inviting our attention to Rule 3 of the Environment (Protection) Act, 1986 (for short, 'the Rules') which provides standards for emission or discharge of environmental pollutants; read with item no.79 i.e. Coke, schedule I. Submitted that the parameters/standards prescribed therein do not tally with the report submitted by respondent no.3 Board. By inviting our attention to the said provisions which provide for use of process water as quenching water shall not be permissible, it was submitted that respondent no.4 in the instant case, has committed breach of the provisions of rule and continue to do so even till the date. It is therefore, submitted that there is no alternative but to order closure of the unit. These submissions, in our opinion, are required to be rejected on the short ground that this court dealing with a petition under Article 226 of the Constitution of India need not enter into the disputed questions of facts. In any case, it is too difficult for this court to minutely compare the prescribed standards with standard set by the Board. Assuming that there was some breach in

maintaining the standard of air pollution by the respondent no.4, by that fact itself, the court cannot order closure of the unit. In such circumstances, the court can give appropriate directions to the Pollution Board to properly monitor and conduct frequent inspections, by collecting samples from the erring unit. The pollution Board can exercise the powers vested in it. In any case, economic development cannot be attained at the cost of environment.

12. The Apex Court in the case of **ESSAR Oil Ltd. v. Halar Utkarsh Samiti,** reported in (2004) 2 SCC 392 has considered this aspect of the matter . In pages 26 and 27 of the judgment, it is observed as under:

> "26. Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the fourth principle says:
>
> > "man has special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature

> conservation including wildlife must, therefore, receive importance in planning for economic developments."

These two principles highlight the need to factor in environmental considerations while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life" The importance of maintaining a balance between economic development on the one hand and environmental protection on the other is again emphasized in Principle 11 which says:

> "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all."

27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all developmental initiatives threaten the environment. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, deforestation, filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a

deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither can be sacrificed at the altar of the other. This view was also taken by this court in Indian Council for enviro-Legal action v. Union of India, where it was said:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

In substance, balance is required to be maintained to maintain economic and social needs on the one hand and environmental consideration on the other.

13. Bearing these principles in mind, in our opinion, no case is made out by the petitioners warranting this court to grant the prayer made in the petition to set aside the NOC granted to respondent no.4 and directing closure of the company by holding that permitting respondent to continue production activity is against public interest.

14. A grievance has been made by the learned counsel for the petitioners that the process undertaken by respondent no.4 is detrimental to people at large and agro industry and economic interest of Kachchh district in particular. The submission of learned Advocate that in the process of generation of coal and in producing the coal as final product, respondent no.4 company use every day gallons of water. In a water scarcity area like Kachchh, particularly in village Lakhapar such criminal wastage of water is directly against public interest and cannot be permitted. From the affidavit-in-reply of respondent no.4 it appears that respondent company has also three bores from which required water is drawn. However, with a view to meet with the requirement, the respondent is sourcing water from local supplier through tunnels at substantial cost. In the affidavit of respondent no.4, it is clearly denied that taking water from the tank is against the interest of the public at large of the village. It is also stated that the respondent-Company has made arrangement with Gujarat Water Infrastructure to supply water from Narmada canal and for that purpose, it has already deposited an amount of Rs. 135 lakhs for supply of water for six months. It is stated before us by the learned Advocate that the respondent no.4 company has already acquired necessary infrastructure and are in the process of laying pipe lines. According to the learned Advocate, the entire process will take three or four months' time for the respondent company. In view of this also we see no merit in the submission that fetching water by respondent company will adversely affect supply of water to the villages.

In view of the above discussion, we hardly see any merit in the petition. In fact, it appears to us that the petition itself is not bonafide. This is particularly in view of the fact that some interested persons in the village are keen to create obstructions in the smooth running of the respondent-company. It is clear from the fact that a civil suit with respect to the subject matter was filed under Order 1 Rule 8 of the Civil Procedure Code against respondent no.4. Having failed to obtain any relief from the aforesaid proceedings this petition was filed in the year 2004 and in this context, they have filed one more petition i.e. SCA No.20969/05 wherein a prayer for the same relief as has been made in the present petition is made. Thus, it appears to us that a planned strategy has been made for a common purpose to prevent respondent no 4 from carrying on its manufacturing activities. Be that as it may, in view of the above discussion, we hardly see any merit in this petition and the same is accordingly dismissed. Notice discharged.

As we have dismissed this petition by a reasoned order, the other petition (SCA No.20969 of 2005) wherein the same pleadings are made and we find no merit in that petition also and it is also dismissed for the same reason stated herein.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp